



Senate

General Assembly

January Session, 2011

File No. 338

Senate Bill No. 1114

Senate, April 4, 2011

The Committee on Environment reported through SEN. MEYER of the 12th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT REVISING THE DEFINITION OF TIDAL WETLANDS AND THE HIGH TIDE LINE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-29 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2011*):

3 The following words and phrases, as used in sections 22a-28 to 22a-
4 35, inclusive, shall have the following meanings:

5 (1) "Commissioner" means the Commissioner of Environmental
6 Protection;

7 (2) "Wetland" means those areas which border on or lie beneath
8 tidal waters, such as, but not limited to, banks, bogs, salt marsh,
9 swamps, meadows, flats, or other low lands subject to tidal action,
10 including those areas now or formerly connected to tidal waters, and
11 [whose surface is at or below an elevation of one foot above local
12 extreme high water; and] upon which may grow or be capable of

13 growing some, but not necessarily all, of the following: Salt meadow
14 grass (*Spartina patens*), spike grass (*Distichlis spicata*), black grass
15 (*Juncus gerardi*), saltmarsh grass (*Spartina alterniflora*), saltworts
16 (*Salicornia Europaea*, and *Salicornia bigelovii*), sea lavender
17 (*Limonium carolinianum*), saltmarsh bulrushes (*Scirpus robustus* and
18 *Scirpus paludosus* var. *atlanticus*), sand spurrey (*Spergularia marina*),
19 switch grass (*Panicum virgatum*), tall cordgrass (*Spartina pectinata*),
20 high-tide bush (*Iva frutescens* var. *oraria*), cattails (*Typha angustifolia*,
21 and *Typha latifolia*), spike rush (*Eleocharis rostellata*), chairmaker's
22 rush (*Scirpus americana*), bent grass (*Agrostis palustris*), and sweet
23 grass (*Hierochloe odorata*), royal fern (*Osmunda regalis*), interrupted
24 fern (*Osmunda claytoniana*), cinnamon fern (*Osmunda cinnamomea*),
25 sensitive fern (*Onoclea sensibilis*), marsh fern (*Dryopteris thelypteris*),
26 bur-reed family (*Sparganium eurycarpum*, *Sparganium androcladum*,
27 *Sparganium americanum*, *Sparganium chlorocarpum*, *Sparganium*
28 *angustifolium*, *Sparganium fluctuans*, *Sparganium minimum*), horned
29 pondweed (*Zannichellia palustris*), water-plantain (*Alisma triviale*),
30 arrowhead (*Sagittaria subulata*, *Sagittaria graminea*, *Sagittaria eatoni*,
31 *Sagittaria engelmanniana*), wild rice (*Zizania aquatica*), tuckahoe
32 (*Peltandra virginica*), water-arum (*Calla palustris*), skunk cabbage
33 (*Symplocarpus foetidus*), sweet flag (*Acorus calamus*), pickerelweed
34 (*Pontederia cordata*), water stargrass (*Heteranthera dubia*), soft rush
35 (*Juncus effusus*), false hellebore (*Veratrum viride*), slender blue flag
36 (*Iris prismatica* pursh), blue flag (*Iris versicolor*), yellow iris (*Iris*
37 *pseudacorus*), lizard's tail (*Saururus cernuus*), speckled alder (*Alnus*
38 *rugosa*), common alder (*Alnus serrulata*), arrow-leaved tearthumb
39 (*Polygonum sagittatum*), halberd-leaved tearthumb (*Polygonum*
40 *arifolium*), spatter-dock (*Nuphar variegatum* *nuphar advena*), marsh
41 marigold (*Caltha palustris*), swamp rose (*Rosa palustris*), poison ivy
42 (*Rhus radicans*), poison sumac (*Rhus vernix*), red maple (*Acer*
43 *rubrum*), jewelweed (*Impatiens capensis*), marshmallow (*Hibiscus*
44 *palustris*), loosestrife (*Lythrum alatum*, *lythrum salicaria*), red osier
45 (*Cornus stolonifera*), red willow (*Cornus amomum*), silky dogwood
46 (*Cornus obliqua*), sweet pepper-bush (*Clethra alnifolia*), swamp
47 honeysuckle (*Rhododendron viscosum*), high-bush blueberry

48 (Vaccinium corymbosum), cranberry (Vaccinium macrocarpon), sea
49 lavender (Limonium nashii), climbing hemp-weed (Mikania scandens),
50 joe pye weed (Eupatorium purpureum), joe pye weed (Eupatorium
51 maculatum), thoroughwort (Eupatorium perfoliatum);

52 (3) "Regulated activity" means any of the following: Draining,
53 dredging, excavation, or removal of soil, mud, sand, gravel, aggregate
54 of any kind or rubbish from any wetland or the dumping, filling or
55 depositing thereon of any soil, stones, sand, gravel, mud, aggregate of
56 any kind, rubbish or similar material, either directly or otherwise, and
57 the erection of structures, driving of pilings, or placing of obstructions,
58 whether or not changing the tidal ebb and flow. Notwithstanding the
59 foregoing, "regulated activity" shall not include activities conducted
60 by, or under the authority of, the Department of Environmental
61 Protection for the purposes of mosquito control, conservation activities
62 of the state Department of Environmental Protection, the construction
63 or maintenance of aids to navigation which are authorized by
64 governmental authority and the emergency decrees of any duly
65 appointed health officer of a municipality acting to protect the public
66 health; and

67 (4) "Person" means any corporation, limited liability company,
68 association or partnership, one or more individuals, and any unit of
69 government or agency thereof.

70 Sec. 2. Subsection (a) of section 22a-30 of the general statutes is
71 repealed and the following is substituted in lieu thereof (*Effective*
72 *October 1, 2011*):

73 (a) The commissioner or his authorized representative shall have the
74 right to enter upon any public or private property at reasonable times
75 to carry out the provisions of sections 22a-28 to 22a-35, inclusive. The
76 commissioner may make an inventory of all tidal wetlands within the
77 state. The boundaries of such wetlands shall be shown on suitable
78 reproductions or aerial photographs to a scale of one inch equals two
79 hundred feet with such accuracy that they will represent a class D
80 survey. [Such lines shall generally define the areas that are at or below

81 an elevation of one foot above local extreme high water.] Such maps
82 shall be prepared to cover entire subdivisions of the state as
83 determined by the commissioner. Upon completion of the tidal
84 wetlands boundary maps for each subdivision, the commissioner shall
85 hold a public hearing. The commissioner shall give notice of such
86 hearing to each owner of record of all lands designated as such
87 wetland as shown on such maps by certified mail, return receipt
88 requested, not less than thirty days prior to the date set for such
89 hearing. The commissioner shall also cause notice of such hearing to be
90 published at least once not more than thirty days and not fewer than
91 ten days before the date set for such hearing in a newspaper or
92 newspapers having a general circulation in the town or towns where
93 such wetlands are located. After considering the testimony given at
94 such hearing and any other facts which may be deemed pertinent and
95 after considering the rights of affected property owners and the
96 purposes of sections 22a-28 to 22a-35, inclusive, the commissioner shall
97 establish by order the bounds of each of such wetlands. A copy of the
98 order, together with a copy of the map depicting such boundary lines,
99 shall be filed in the town clerk's office of all towns affected. The
100 commissioner shall give notice of such order to each owner of record
101 of all lands designated as such wetlands by mailing a copy of such
102 order to such owner by certified mail, return receipt requested. The
103 commissioner shall also cause a copy of such order to be published in a
104 newspaper or newspapers having a general circulation in the town or
105 towns where such wetlands are located. Any person aggrieved by such
106 order may appeal therefrom in accordance with the provisions of
107 section 4-183, except venue for such appeal shall be in the judicial
108 district of New Britain.

109 Sec. 3. Subsection (c) of section 22a-359 of the general statutes is
110 repealed and the following is substituted in lieu thereof (*Effective*
111 *October 1, 2011*):

112 (c) As used in this section and sections 22a-360 to [22a-363] 22a-
113 363b, inclusive, "high tide line" means [a line or mark left upon tide
114 flats, beaches, or along shore objects that indicates the intersection of

115 the land with the water's surface at the maximum height reached by a
116 rising tide. The mark may be determined by (1) a line of oil or scum
117 along shore objects, (2) a more or less continuous deposit of fine shell
118 or debris on the foreshore or berm, (3) physical markings or
119 characteristics, vegetation lines, tidal gauge, or (4) by any other
120 suitable means delineating the general height reached by a rising tide.
121 The term includes spring high tides and other high tides that occur
122 with periodic frequency but does not include storm surges in which
123 there is a departure from the normal or predicted reach of the tide due
124 to the piling up of water against a coast by strong winds such as those
125 accompanying a hurricane or other intense storm] the elevation of the
126 Mean Higher High Water for the period between 1983 and 2001, as
127 contained in the 2001 tidal epoch approved by the National Oceanic
128 and Atmospheric Administration.

This act shall take effect as follows and shall amend the following sections:

Section 1	October 1, 2011	22a-29
Sec. 2	October 1, 2011	22a-30(a)
Sec. 3	October 1, 2011	22a-359(c)

ENV *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note**State Impact:**

Agency Affected	Fund-Effect	FY 12 \$
Department of Environmental Protection	GF - Cost	25,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill changes the definition of tidal wetland and high tide lines. This results in a one-time cost of approximately \$25,000 in FY 12 for the Department of Environmental Protection (DEP) to hire temporary staff to retrain the regulated community and update various publications and documents.

The Out Years

The annualized ongoing fiscal impact identified above terminates in FY 12.

OLR Bill Analysis**SB 1114*****AN ACT REVISING THE DEFINITION OF TIDAL WETLANDS AND THE HIGH TIDE LINE.*****SUMMARY:**

This bill changes the definitions of tidal wetland and high tide line.

In the definition of a tidal wetland it removes the requirement that such wetland's surface be at or below one foot above local extreme high water. It also deletes the requirement that tidal wetland inventory boundary lines shown on reproductions or aerial photographs generally define areas that are at or below an elevation of one foot above extreme high water.

Under the bill, the "high tide line" is based upon the Mean Higher High Water elevation from the National Oceanic and Atmospheric Administration's (NOAA) 2001 tidal epoch. By law, this term is used to define areas subject to the Department of Environmental Protection's (DEP) jurisdiction regarding activities such as dredging, structure erection, and fill placement. The bill broadens the statutory sections to which this definition applies by including sections addressing certain coastal maintenance activities. The DEP commissioner is generally responsible for protecting and managing tidal wetlands and coastal water resources.

The bill also makes technical changes.

EFFECTIVE DATE: October 1, 2011

TIDAL WETLAND

The bill redefines a tidal "wetland" as an area that borders on or lies beneath tidal waters, including areas now or formerly connected to

tidal waters, and is capable of growing some of many statutorily listed plant species which include, among others, cattails, skunk cabbage, and loosestrife. Under existing law, these areas' surfaces must also be at or below an elevation of one foot above local extreme high water. The bill removes this elevation requirement.

By law, the DEP commissioner can enter such lands, whether public or private, for purposes such as tidal wetland inventory and inspection.

HIGH TIDE LINE

The bill redefines "high tide line" as the Mean Higher High Water elevation between 1983 and 2001, from NOAA's 2001 tidal epoch.

Under existing law, the high tide line is a line or mark left on tidal flats, beaches, or shore objects indicating the intersection of land with the water's surface at a rising tide's maximum height. It may be determined by (1) an oil or scum line along shore objects; (2) a relatively continuous deposit of fine shell or debris on the foreshore or berm; or (3) physical markings or characteristics, vegetation lines, or tidal gauge. The term includes spring or other periodic high tides but does not include storm surges.

BACKGROUND

Mean Higher High Water and Tidal Epoch

Higher high water means the higher of the two high waters of any tidal day. The Mean Higher High Water elevation is the average of the higher high water heights of each tidal day observed over the National Tidal Datum Epoch (NTDE). An epoch is a 19-year cycle used to calculate datums. The present NTDE is 1983 through 2001.

COMMITTEE ACTION

Environment Committee

Joint Favorable

Yea 21 Nay 6 (03/18/2011)